

**INITIAL STATEMENT OF REASONS/PLAIN ENGLISH
OVERVIEW/NON-CONTROLLING SUMMARY**

REGULATION 1616, FEDERAL AREAS

Regulation 1616 interprets and explains the application of sales and use tax to sales of tangible personal property in areas subject to federal jurisdiction, as defined. It explains when such sales are subject to sales and use tax and when they are not.

Specific Purpose

The purpose of the proposed amendments is to interpret, implement, and make specific Revenue and Taxation Code section 6011 and 6012. These amendments are necessary to provide guidance to that portion of the public which is affected by this statute.

Factual Basis

Regulation 1616 discusses the application of tax to sales of tangible personal property to and by Indians on and off reservations. Regulation 1616(d) concerning Indian reservations generally provides that tax applies to on-reservation sales by non-Indian retailers to non-Indians and Indians not residing on a reservation, but not to on-reservation sales to Indians residing on a reservation. The regulation further provides that sales tax does not apply to any on-reservation sales made by Indian retailers, whether to Indians who reside on a reservation, non-Indians, or Indians who do not reside on a reservation. However, an on-reservation Indian retailer is responsible for collecting the use tax from non-Indians and Indians not residing on a reservation unless the on-reservation retail sale is otherwise not subject to tax. Furthermore, Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation.

RTC sections 6011 and 6012 generally define “sales price” (use tax) and “gross receipts” (sales tax), respectively, as the total amount for which tangible personal property is sold, leased or rented, but specifically exclude certain taxes and other amounts from the measure of the tax. Under previous law, the California sales and use tax was computed on the gross receipts or sales price including the amount of tax imposed by the Indian tribe. Operative January 1, 2003, Assembly Bill 2701 (AB 2701), (Stats. 2002, Ch. 593) added subdivision (c)(12)(A) to RTC sections 6011 and 6012 to provide that the terms “gross receipts” and “sales price” do not include the amount of tax imposed by any Indian tribe within California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer. Newly enacted subdivision (c)(12)(B) of RTC sections 6011 and 6012 further specifies that the exclusion only applies to those retailers who are in substantial compliance with the Sales and Use Tax Law. The statutes do not define “substantial compliance.” The Board concluded that it needed to add definitions of “substantial compliance” so that taxpayers and auditors both would have a standard to adjudge whether or not the exclusion applied.

New subdivision (d)(3)(C) added. The language of subdivisions (d)(3)(C), (d)(3)(C)1., and (d)(3)(C)2. are taken directly from AB 2701. Subdivisions (d)(3)(C)3. and (d)(3)(C)4. define the statutory requirement of “substantial compliance” The former requires that the retailer must maintain and make available for examination by the Board all records necessary to determine the correct tax liability under the Sales and Use Tax Law, and all records necessary for the proper completion of the Sales and Use Tax return, as explained in Regulation 1698, *Records*. Failure to make the books and records available for audit or other examination means that the retailer is not in substantial compliance. The latter requires that, at the time of the sale, the retailer must hold a valid and active seller’s permit or a valid and active certificate of registration – use tax issued by the Board. Under section 6066, a valid and active seller’s permit is required of every person engaged in the business of selling in this state tangible personal property. Out-of-state retailers engaged in business in California and making sales of tangible personal property, the storage, use or other consumption of which is subject to tax, are required to register with the Board, collect the California use tax from the consumer and pay it to the state. (§§ 6203 & 6226.) A retailer who operates without a valid and active seller’s permit or a valid and active certificate of registration – use tax is not in substantial compliance with the Sales and Use Tax Law.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed amendments will not have a significant adverse economic impact on private businesses or persons. The amendments are proposed to interpret, implement, and make specific the authorizing statutes in the context covered by the regulation for greater ease of understanding and to conform the regulation to recent legislation. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.